

REMARKS

Response

Claims 1-9 are currently pending. Claims 1-3 and 5-9 have been rejected and claim 4 is objected to. Applicant has amended claim 4 because Examiner recognized allowable subject matter in claim 4 if rewritten in independent form. Therefore, Applicant has amended claim 4 to be rewritten in independent form including all of the limitations of the base claim. Applicant has also added new claims 11-20. The subject matter of the new and amended claims is supported by the specification and no new matter is added. Reconsideration is respectfully requested.

Claim Rejections

Rejections Pursuant to 35 U.S.C. § 103

The Examiner has rejected claims 1-3 and 5-7 pursuant to 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 3,954,238 to Nivet (hereinafter, "Nivet") in view of U.S. Patent No. 3,054,585 to Roberts et al. (hereinafter, "Roberts et al."). The Examiner specifically alleges that Nivet teaches an adjustable one-piece molded clamp comprising first (2) and second (2a) unitary jaws and a tension strap (7) unitary with the first jaw. The Examiner further alleges that Roberts et al. teach the outward facing surface of the jaw (13) having at least two angularly offset notches (15) and the strap (10) having at least one through aperture. The Examiner alleges that it would have been obvious for one skilled in the art to have modified the outward facing surface of the second jaw in Nivet with the notches and strap of Roberts et al. *See* Office Action mailed October 17, 2005, pp. 2-3. Applicant respectfully traverses the rejection.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. In re Piasecki, 745 F.2d 1468 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the reference or combination of references must teach or disclose all of the claimed limitations of the invention. See In re Zurko, 111 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2143.03. Third, if there is a teaching, suggestion, or incentive, it must motivate the skilled artisan to combine the teachings or suggestions with a reasonable expectation of success. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. See In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2143.03. Therefore, it is improper for the Examiner to use the applicant's invention as a blueprint to hunt through the prior art for the claimed elements and then combine them as claimed. See In re Zurko, 111 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997).

Applicant's adjustable one-piece molded clamp, as claimed in Applicant's claim 1, comprises first and second jaws, the second jaw unitarily formed with the first jaw. There are at least two notches in the outward facing surface of the second jaw. There is a tension strap that is *unitarily* formed with the first jaw, the tension strap having at least one through-aperture through

which the second jaw is able to pass, the inner edge of the through-aperture able to be releasably engaged with at least one of the notches. The notches correspond to differing levels of clamp force.

Applicant respectfully submits that the Examiner has not satisfied the burden of establishing a *prima facie* case of obviousness. See In re Piasecki, 745 F.2d 1468 (Fed. Cir. 1984). First, the combination of Nivet and Roberts et al. fails to teach or suggest all of the elements of Applicant's claimed invention. Nivet teaches a safety clamp having a safety cam (7) hingedly (6) connected to collar (2). See Nivet, col. 3, lines 23-30; col. 4, lines 32-33; Figures 1-4. In contrast to Applicant's claimed invention, Nivet does not disclose a tension strap that is *unitarily* formed with the first jaw. Rather, Nivet requires a hinge or a separate piece to connect the safety cam to the collar. Nivet offers no suggestion to incorporate the cam with the collar because the cam is specifically designed to have a semi-cylindrical shape and preferably a projecting cusp shaped to match a tubular element. See Nivet, col. 1, lines 48, 65-68. Because Nivet fails to teach a tension strap unitarily formed with the first jaw, Robert et al.'s teaching with respect to a plurality of slots (15) becomes moot.

Furthermore, there is no suggestion or motivation in Nivet to modify Nivet's device to include the slots disclosed by Roberts et al. to make the clamp adjustable. Nivet only teaches a pair of shoulders (8, 9) that snap together to lock the cam over collar arm (2a). See Nivet, col. 3, lines 35-40. In fact, Nivet would not work with the plurality of slots taught by Roberts et al. because the length of cam (7) in Nivet is designed so that the two shoulders (8, 9) snap together

to lock the cam over collar arm (2a). *See* Nivet, col. 3, lines 35-40. Because Nivet is designed with only one locking position (i.e., shoulders 8, 9 snapped together), Nivet is not adjustable. The length of cam (7) would prohibit cam (7) from extending to any slots positioned below shoulder (9) on collar arm (2a). Likewise, cam (7) would be too long to snappingly engage any slots positioned above shoulder (9) on collar arm (2a). Thus, Nivet would not work with the plurality of slots taught by Roberts et al. As such, Nivet's device cannot be modified to provide differing levels of clamp force, as is claimed by Applicant in claim 1.

For at least these reasons, Nivet in view of Roberts et al. does not obviate Applicant's claimed invention and therefore the rejection cannot stand. Withdrawal of the rejection is respectfully requested.

The Examiner further alleges that Nivet discloses a clamp that includes at least one protrusion. *See* Office Action mailed October 17, 2005, page 2. Applicant respectfully traverses the rejection.

First, Nivet does not teach protrusions on the inward facing surfaces of the first and second jaws as claimed by Applicant in claims 2 and 3. The only protrusion taught by Nivet is the projecting cusp 10, which is located on the inner surface of cam 10, not on the inner surfaces of first and second jaws as is claimed by Applicant. Furthermore, because the combination of Nivet and Roberts et al. fail to teach each and every element of Applicant's claimed invention, as discussed above, Nivet's alleged teaching with respect to protrusions becomes moot. Therefore, the rejection cannot stand and Applicant respectfully requests withdrawal thereof.

The Examiner has also rejected claim 5 as allegedly being unpatentable over Nivet in view of Roberts et al. because "[i]t would have been obvious for one of ordinary skill in the art...to have added means to mount Nivet's clamp as taught by Roberts et al. to provide support for clamp to remain connected to the surface." *See* Office Action mailed October 17, 2005, page 3. Applicant respectfully traverses the rejection.

Because the combination of Nivet and Roberts et al. fails to teach or suggest all of the elements of Applicant's claimed invention, as in claim 1, and further because Nivet would not work with the notches of Roberts et al. for at least the reasons discussed above, Robert et al.'s teaching with respect to the means to mount the clamp to a surface becomes moot. Therefore, the rejection cannot stand and withdrawal thereof is respectfully requested.

The Examiner has also rejected claim 8 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Nivet in view of Roberts et al. and in further view of U.S. Patent No. 6,496,094 to May III (hereinafter, "May III"). The Examiner alleges that Nivet fails to teach that the clamp is made of rubber, that May III teaches a clamp made of rubber, and that it would have been obvious for one skilled in the art to have modified the clamp of Nivet to be made of rubber. *See* Office Action mailed October 17, 2005, page 3. Applicant respectfully traverses the rejection.

For at least the reasons discussed above, the combination of Nivet and Roberts et al. does not teach or suggest each and every element of Applicant's claimed invention, nor would Nivet even work with the notches of Roberts et al. Therefore, any alleged teaching in May III

regarding the use of rubber does not ameliorate the deficiencies of the combination of the Nivet and Roberts et al. references. Applicant respectfully requests that the rejection be withdrawn.

Examiner has also rejected claim 9 pursuant to 35 U.S.C. § 103 as allegedly being unpatentable over Nivet in view of Roberts et al. and in further view of U.S. Patent No. 3,848,839 to Tillman (hereinafter, "Tillman"). The Examiner alleges that while Nivet fails to teach that the clamp is made of synthetic rubber, Tillman teaches the clamp is made of synthetic rubber. *See* Office Action mailed October 17, 2005, pp. 3-4. Applicant respectfully traverses the rejection.

As discussed above, the combination of Nivet and Roberts et al. does not teach or suggest each and every element of Applicant's claimed invention, nor would Nivet even work with the notches of Roberts et al. for at least the reasons discussed above. Therefore, any alleged teaching in Tillman regarding the use of synthetic rubber does not ameliorate the deficiencies of the combination of the Nivet and Roberts et al. references. Applicant respectfully requests that the rejection be withdrawn.

Allowable Subject Matter

Applicant appreciates the Examiner's recognition of allowable subject matter in claim 4.

Conclusion

Applicant respectfully submits that the patent application and the claims, as amended, are in a condition for allowance. Accordingly, reconsideration and allowance of the claims is respectfully requested.

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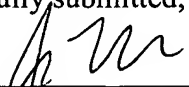
Applicant would appreciate the courtesy of a telephone call should the Examiner have any questions or comments with respect to this response or the claim language for purposes of efficiently resolving same.

The Commissioner is hereby authorized to charge Deposit Account No. 03-2026 for any fees associated with this Amendment and Response.

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